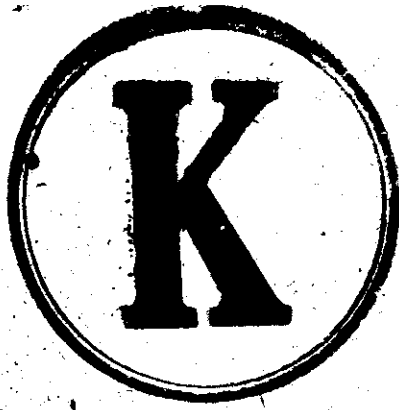


1947



File No. *O. Arbitration*

47
Legal Dept

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Subject:—

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Act, 1940.

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Re: Proposed civil suit by
H.Q. Bombay Area for recovery
of Rs. 5795/- from Mr.
Habib Hussein, of Marine
Lines, Bombay.

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CONFIDENTIAL
LETTER.

No. 56-P-Conf.
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 11th October 1947.

To

The A. A. G.,
Headquarters, Bombay Area,
Colaba, Bombay.

Subject:- Proposed suit for recovery of Rs. 5795/-
from Habib Hussain, 9 Marine Drive, Bombay.

Sir,

With reference to your letter No. 312/525/A, dated the 12th September 1947 and in continuation of this office letter No. 20-P-Conf., dated the 22nd September 1947, I have the honour to observe as follows:-

The saying has been attributed to Lord Mansfield that nothing but express words can take away the jurisdiction of the Superior Courts, but it seems that it may certainly be taken away by implication. Thus, a provision that if any dispute arises between a society and any of its members it shall be lawful to refer it to arbitration ousts the jurisdiction of the Courts over such disputes". (See Maxwell page 117)

Clause 3(d) of the agreement in the present case provides:

In the event of any dispute arising between the parties hereto as to any right or obligation arising hereunder or as to the interpretation of any clause, covenant, proviso or stipulation made herein (the settlement of which has not hereinbefore been specifically provided for) such dispute shall be in the first place of the parties or their agents..... and in default of agreement between these two arbitrators, such dispute shall be referred to a single umpire to be nominated by agreement between the two arbitrators appointed as aforesaid..... such proceedings of the two arbitrators severally appointed by the parties hereto, and of the single umpire to be nominated by the said two arbitrators to be governed by and carried out in accordance in all respects with the Indian Arbitration Act for the time being in force".

In the present case the proprietor is presumably sought to be made liable by virtue of clause 1(d) of the agreement and consequently the dispute is clearly one relating to a right arising under the terms of the agreement and as to the interpretation of the particular clause of the agreement.

Section 28 of the Indian Arbitration Act, 1940 provides a bar to a suit contesting arbitration agreement or award and under section 34 the Court can stay legal proceedings where there is an arbitration agreement. It is therefore apparent that the agreement between the parties clearly provides for a machinery for settlement of the dispute and impliedly ousts the jurisdiction of the civil court. The military authorities should therefore take steps to refer the dispute to arbitration under clause 3(d) of the agreement instead of filing any suit.

2. The papers accompanying your letter under reference are enclosed.

Your obedient servant

Ida/.... 10/20

Remembrancer of Legal Affairs

SNR 27-8-88
4 Copies.